

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

DANCO, INC.,

Plaintiff,

v.

FLUIDMASTER, INC.,

Defendant.

Civil Action No.: 5:16-CV-00073-JRG-CMC

**FLUIDMASTER’S CORRECTED JOINT CLAIM CONSTRUCTION CHART**

In accordance with the Fifth Amended Agreed Docket Control Order [Docket Entry # 91] and P.R. 4-5(d) the Fluidmaster hereby submits its Joint Claim Chart for asserted U.S. Patent Nos. 8.943,620 (“the ‘620 Patent”) and 9.181,687 (“the ‘687 Patent”). Danco previously filed the Joint Claim Construction Chart without waiting for Fluidmaster's revisions. D.E. 94. The document filed by Danco contained numerous errors, and the parties agreed to file an amended joint chart that corrected the errors and noted each side's objections. This filing represents the last version approved by Danco, although it still contains errors that Fluidmaster pointed out to Danco but got no response before the filing deadline. Specifically, Fluidmaster contends that many of Danco’s objections based on Fluidmaster’s 4-2 disclosures are not properly founded. Nonetheless, such objections are included to the benefit of Danco.

Attached hereto as Exhibit A is a chart of the claim terms and phrases proposed for construction by Defendant Fluidmaster, Inc. and on which the parties agree. Attached hereto as Exhibit B is a chart of the claim terms and phrases proposed for construction by both parties and on which the parties disagree. Attached hereto as Exhibit C is a chart of the claim terms and phrases proposed for construction by Defendant Fluidmaster, Inc. and on which the parties

disagree. Attached hereto as Exhibit D is a chart listing the complete language of disputed claims with disputed claim terms and phrases in bold type.

Danco objects to Fluidmaster's indefiniteness contentions in Exhibits B and C for the following terms or phrases, which contentions were not timely disclosed in Fluidmaster's March 28, 2017 P.R. 3-3 Invalidity Contentions:

'620 Patent

1. "detachably attached"
2. "rotatably coupled"

'687 Patent

1. "adapter"
2. "second end"

Danco further objects to Fluidmaster's indefiniteness contentions in Exhibits B and C for the following terms or phrases, which contentions were neither timely disclosed in Fluidmaster's March 28, 2017 P.R. Invalidity Contentions nor disclosed in Fluidmaster's May 19, 2017 P.R. 4-2 "Preliminary Claim Constructions and Extrinsic Evidence" disclosure:

1. "adaptor"
2. "flush opening"
3. "a flush opening configured to mate to a basket structure of a dual flush canister for a toilet";
4. "first end"
5. "the first end being configured to couple to a dual flush canister";
6. "tab(s)"
7. "tabs extending inward"

8. "the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet";
9. "adaptor flush opening of a flush valve adaptor";
10. "circular support structure"; and
11. "a circular support structure configured to align the dual flush canister with the dual flush opening."

Fluidmaster objects to the following alternative constructions in Exhibits B and C offered by Danco, as they were not included in Danco's Exchange of Preliminary Claim Constructions and Extrinsic Evidence under P.R. 4-2, or the parties' Joint Claim Construction and Prehearing Statement under P.R. 4-3.:

'620 Patent

1. "Gasket": "a rubber ring, for placing around a joint to make it watertight."
2. "Adaptor": "a connector for joining parts."
3. "Rotatably Coupled": "joined to allow rotation"
4. "Actuator": "mechanism to start a process"

'687 Patent

1. "Adapter": "a connector for joining parts."
2. "Basket structure": "basket-shaped structure"
3. "Second End": "the latter of two extremities."

Respectfully submitted, this 14<sup>th</sup> day of August, 2017, by:

/s/ Sean D. Flaherty  
E. Glenn Thames, Jr.  
glennthames@potterminton.com  
POTTER MINTON, APC

110 North College, Suite 500  
Tyler, Texas 75702  
Telephone: 903-597-8311  
Fax: 903-593-0846

Richard P. Sybert  
(Cal. Bar # 80731 Admitted Pro Hac Vice)  
rsybert@gordonrees.com  
Reid E. Dammann  
(Cal Bar # 249031 Admitted Pro Hac Vice)  
rdammann@gordonrees.com  
Sean D. Flaherty  
(Cal. Bar # 272598 Admitted Pro Hac Vice)  
sflaherty@gordonrees.com  
Robert L. Horn  
(Texas Bar # 24046107)  
rhorn@gordonrees.com  
GORDON & REES LLP  
101 W. Broadway, Suite 2000  
San Diego, California 92101  
Phone: (619) 696-6700  
Fax: (619) 696-7124

*Attorneys for Defendant Fluidmaster, Inc.*

**EXHIBIT A – JOINT CLAIM CONSTRUCTION CHART**

TERMS/PHRASES PROPOSED FOR CONSTRUCTION BY FLUIDMASTER UPON WHICH THE PARTIES AGREE

<b>U.S. Patent No. 8,943,620</b>				
<u>Claim term, phrase or clause</u>	<u>Claim(s)</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
<b>“flush mechanism”</b>	1, 2, 4, 11	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“predefined flush capability”</b>	1, 2	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“between”</b>	1, 21	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“flush orifice”</b>	1, 20, 21	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“sealing member”</b>	1, 21	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“seat a sealing member”</b>	1	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“in contact with the flush orifice”</b>	21	[AGREED]	[AGREED]	<b>Plain meaning.</b>

<b>U.S. Patent No. 9,181,687</b>				
<u>Claim term, phrase or clause</u>	<u>Claim(s)</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
<b>“flush valve opening”</b>	14	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“sealing material”</b>	14, 15	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“lip”</b>	4, 14	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“engage a lip”</b>	4	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“support legs”</b>	4, 14, 20	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“mating ears”</b>	7, 17	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“annular groove”</b>	7, 17	[AGREED]	[AGREED]	<b>Plain meaning.</b>
<b>“extending between”</b>	4, 14, 20	[AGREED]	[AGREED]	<b>Plain meaning.</b>

**EXHIBIT B – JOINT CLAIM CONSTRUCTION CHART**

TERMS/PHRASES FOR WHICH BOTH PARTIES SEEK CONSRUCTION AND UPON WHICH THE PARTIES DISAGREE

<b>U.S. Patent No. 8,943,620 and U.S. Patent No. 9,181,687</b>				
<u>Claim term, phrase or clause</u>	<u>Claims</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
<b>“detachably attached”</b>	<u>‘620 Patent</u> 1, 4	“removably retained”	Indefinite.  Or , if construed, “designed for direct separation and direct reattachment without degradation (referring to gasket)”	
<b>“flush valve”</b>	<u>‘620 Patent</u> 1, 21	“a valve located at the bottom of a toilet tank used to discharge water from the toilet tank to a toilet bowl”	“valve which uses a sealing member to ensure water does not leak into the toilet bowl until a flush is initiated”	
	<u>‘687 Patent</u> 4, 14			
<b>“dual flush canister”</b>	<u>‘620 Patent</u> 11, 12, 21, 22	“cylindrical-shaped device providing for two flush volumes”	“a dual flush mechanism having at least a partially cylindrical shape”	
	<u>‘687 Patent</u> 4, 7, 9, 14, 17, 19, 20			

**EXHIBIT C – JOINT CLAIM CONSTRUCTION CHART**

TERMS/PHRASES FOR WHICH FLUIDMASTER SEEKS CONSRUCTION AND UPON WHICH THE PARTIES DISAGREE

<b>U.S. Patent No. 8,943,620</b>				
<u>Claim term, phrase or clause</u>	<u>Claims</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
<b>“gasket”</b>	1, 4, 21	Needs no construction; plain meaning.  (“a rubber ring, for placing around a joint to make it watertight”)	“a non-adhesive object that creates a fluid seal which is maintained by compressive resilience”	
<b>“adaptor”</b>	4, 11, 12, 21	Needs no construction; plain and ordinary meaning.  (“a connector for joining parts”)	Indefinite.  Or , if construed: “any of various devices used in adjusting or fitting to each other the separate parts of a machine or apparatus whose design is such that adjustment or fitting would otherwise not be possible (as two pipes of different diameters)”	
<b>“rotatably coupled”</b>	12	Needs no construction; plain meaning.  (“joined to allow rotation”)	Indefinite.  Or , if construed: “coupled through rotation”	
<b>“actuator”</b>	22	Not indefinite.  Needs no construction; plain meaning.  (“mechanism to start a process”)	Indefinite.  Or, if construed: “part or assembly which causes movement”	

<b>U.S. Patent No. 9,181,687</b>				
<u>Claim term, phrase or clause</u>	Claims	Danco's Proposed Construction	Fluidmaster's Proposed Construction	<u>Court's Construction</u>
<b>“adapter”</b>	14	Needs no construction; plain meaning.  (“a connector for joining parts”)	Indefinite.  Or , if construed: “any of various devices used in adjusting or fitting to each other the separate parts of a machine or apparatus whose design is such that adjustment or fitting would otherwise not be possible (as two pipes of different diameters)”	
<b>“flush opening”</b>	4	Needs no construction; plain meaning.	Orifice of a flush valve.	
<b>“flush opening”, <i>see:</i>  “a flush opening configured to mate to a basket structure of a dual flush canister for a toilet” (claim 1) / “adapter flush opening of a flush valve adapter” (claim 14) / “flush opening” (claim 16)</b>	14	Not a “means-plus-function” claim.  Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6 and limited to structure or its equivalents, identified below.  <u>Function:</u> mate to a basket structure of a dual flush canister for a toilet  <u>Structure:</u> “upper flange and ear structure of adapter fittings 603, 604 via gasket 606”	



<b>“flush opening”</b>	20	Needs no construction; plain meaning.	Indefinite.	
<b>“basket structure”</b>	4, 9, 13, 14, 19, 20	Needs no construction; plain meaning.  (“basket-shaped structure”)	“a spacer having two parallel rings vertically separated by connecting members, the lower ring having a horizontal orientation ( <i>e.g.</i> , a floor)”	
<b>“first end”, <i>see</i>:  “the first end being configured to couple to a dual flush canister” (claims 4, 14, 20)</b>	4, 7, 14, 17, 20	Not a “means-plus-function” claim.  Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6 and limited to structure or its equivalents, identified below.  <u>Function</u> : couple to a dual flush canister  <u>Structure</u> : “top ring of adapter 133 having internal slots 233 and internal annular groove 236”	
<b>“second end”</b>	4, 13, 14, 20	Needs no construction; plain meaning.  (“the latter of two extremities”)	Indefinite.  Or , if construed, “the lower ring having a horizontal orientation ( <i>e.g.</i> , floor) of the basket structure”	

<p><b>“tabs”, <i>see</i>:</b></p> <p><b>“tabs extending inward” (claim 4, 14) / “the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet” (claim 4)</b></p>	<p>4, 14</p>	<p>Not a “means-plus-function” claim.</p> <p>Needs no construction; plain meaning.</p>	<p>Governed by 35 U.S.C. § 112, ¶ 6 and limited to structure or its equivalents, identified below.</p> <p><u>Function</u>: engage a lip of a flush opening of a flush valve previously installed in the toilet.</p> <p><u>Structure</u>: “tabs of the clamping arms 913/933”</p>	
<p><b>“circular support structure”, <i>see</i>:</b></p> <p><b>“a circular support structure configured to align the dual flush canister” (claim 20)</b></p>	<p>20, 21</p>	<p>Not a “means-plus-function” claim.</p> <p>Needs no construction; plain meaning.</p>	<p>Governed by 35 U.S.C. § 112, ¶ 6, but inadequate corresponding structure disclosed, so Indefinite.</p> <p>Or, if construed pursuant to 35 U.S.C. § 112, ¶ 6, limited to structure or its equivalents, identified below.</p> <p><u>Function</u>: Align the dual flush canister with the flush opening</p> <p><u>Structure</u>: “clamp 136, or sleeve adapter 180”</p>	

**EXHIBIT D – JOINT CLAIM CONSTRUCTION CHART**

## COMPLETE LANGUAGE OF DISPUTED CLAIMS

U.S. Patent No. 8,943,620	
Claim	Complete Language of Disputed Claims With Disputed Terms in Bold
1	An apparatus, comprising: a flush mechanism configured to provide for a predefined flush capability in a toilet; and a <b><i>gasket detachably attached</i></b> to the flush mechanism, the gasket forming a seal between the flush mechanism and a flush orifice of a flush valve, the seal being maintained during a full flush of the toilet by the flush mechanism, where the <b><i>flush valve</i></b> is configured to seat a sealing member.
4	The apparatus of claim 2, wherein the dual flush mechanism further comprises an <b><i>adaptor</i></b> configured to <b><i>detachably attach</i></b> to the dual flush mechanism, where the <b><i>gasket</i></b> is attached to the <b><i>adaptor</i></b> .
11	The apparatus of claim 4, wherein the dual flush mechanism further comprises a <b><i>dual flush canister</i></b> coupled to the <b><i>adaptor</i></b> .
12	The apparatus of claim 11, wherein the <b><i>dual flush canister</i></b> is <b><i>rotatably coupled</i></b> to the <b><i>adaptor</i></b> .
14	The apparatus of claim 13, wherein the <b><i>gasket</i></b> includes a pseudo I-beam structure extending around at least a portion of an edge of the second opening.
21	A method, comprising the steps of: removing a sealing member from a <b><i>flush valve</i></b> in a toilet, the <b><i>flush valve</i></b> including a flush orifice that is sealed by the sealing member; positioning an <b><i>adaptor</i></b> having a <b><i>gasket</i></b> over the flush orifice of the <b><i>flush valve</i></b> so that the <b><i>gasket</i></b> comes into contact with the flush orifice, thereby creating a seal between the <b><i>adaptor</i></b> and the flush orifice; and attaching a <b><i>dual flush canister</i></b> to the <b><i>adaptor</i></b> with the <b><i>gasket</i></b> in contact with the flush orifice, the <b><i>dual flush canister</i></b> providing for a dual flush capability.
22	The method of claim 21, further comprising the step of installing an <b><i>actuator</i></b> that triggers an operation of the <b><i>dual flush canister</i></b> .

U.S. Patent No. 9,181,687	
Claim	Complete Language of Disputed Claims With Disputed Terms in Bold
4	An apparatus, comprising: a <b>basket structure</b> having a <b>first end</b> and a <b>second end</b> , <b>the first end being configured to couple to a dual flush canister</b> for a toilet, the <b>dual flush canister</b> being configured to provide both a short flush and a long flush of the toilet; a plurality of <b>tabs extending inward</b> toward a center axis of the <b>basket structure</b> , the <b>plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet</b> ; and a plurality of support legs extending between the <b>first end</b> and the <b>second end</b> defining a plurality of passageways from an exterior of the <b>basket structure</b> to the <b>flush opening</b> .
7	The apparatus of claim 4, wherein the <b>first end</b> is coupled to the <b>dual flush canister</b> via a plurality of mating ears fitting within an annular groove.
9	The apparatus of claim 4, wherein the <b>dual flush canister</b> can be rotated with respect to the <b>basket structure</b> .
13	The apparatus of claim 4, wherein the plurality of <b>tabs</b> are positioned at the <b>second end</b> of the <b>basket structure</b> .
14	An apparatus, comprising: a <b>dual flush canister</b> configured to provide both a short flush and a long flush of a toilet; a <b>basket structure</b> having a <b>first end</b> and a <b>second end</b> , <b>the first end being configured to couple to the dual flush canister</b> ; a plurality of <b>tabs extending inward</b> toward a center axis of the <b>basket structure</b> , the plurality of <b>tabs</b> engaging a lip of an <b>adapter flush opening of a flush valve adapter</b> ; a plurality of support legs extending between the <b>first end</b> and the <b>second end</b> defining a plurality of passageways from an exterior of the <b>basket structure</b> to the adapter <b>flush opening</b> ; and the <b>flush valve adapter</b> further comprising: a flange configured to mate to a <b>flush valve</b> opening of a previously installed <b>flush valve</b> in the toilet, the flange being offset at an angle with respect to the <b>adapter flush opening</b> ; and a sealing material forming a seal between the flange and the flush valve opening.
17	The apparatus of claim 14, wherein the <b>first end</b> is coupled to the <b>dual flush canister</b> via a plurality of mating ears fitting within an annular groove.
19	The apparatus of claim 14, wherein the <b>dual flush canister</b> can be rotated with respect to the <b>basket structure</b> .

20	<p>An apparatus, comprising:</p> <p>a <b><i>dual flush canister</i></b> configured to provide both a short flush and a long flush of a toilet;</p> <p>a <b><i>basket structure</i></b> having a <b><i>first end</i></b> and a <b><i>second end</i></b>, the <b><i>first end being configured to couple to the dual flush canister</i></b>;</p> <p>a plurality of support legs extending between the <b><i>first end</i></b> and the <b><i>second end</i></b> defining a plurality of passageways from an exterior of the <b><i>basket structure</i></b> to a <b><i>flush opening</i></b>; and</p> <p>a <b><i>circular support structure configured to align the dual flush canister with the flush opening</i></b>, the <b><i>circular support structure</i></b> having an inner diameter greater than an outer diameter of a toilet overflow tube.</p>
21	<p>The apparatus of claim 20, wherein the <b><i>circular support structure</i></b> is mounted on the toilet overflow tube.</p>